MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2022/2023 SESSION (TERM ID 2210)

UCV4612 – CIVIL PROCEDURE I

(All Sections / Groups)

10 FEBRUARY 2023
Reading Time: 09:00am-09:15am
(15 Minutes)
Answering Time: 09:15am-12:15pm
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 5 pages with 5 Questions only.

3. This paper consists of two parts. **PART A** is **COMPULSORY. PART B to attempt either question 4A or 4B.** The distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPY of Rules of Court 2012 into the exam venue. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

PART A: COMPULSORY

QUESTION 1

(a) The Plaintiff commenced an action against two defendants. The First Defendant was the Chairman and Chief Executive Officer of the Second Defendant, a listed investment holding company. The Second Defendant is wholly owned by Goli Den Sdn. Bhd. (GDSB). The First Defendant had orally proposed to the Plaintiff that if the latter accepted the offer of employment in GDSB to expand the business of the group of companies in the Middle East, he would start at a low starting salary and commission rate. However, the First Defendant promised the Plaintiff that if GDSB were sold or listed following the expansion of the business in the Middle East, the Plaintiff would make a lot of money. The First Defendant had knowledge that the Plaintiff, had worked and done business in the Middle East for many years and was well-acquainted with the region. The Plaintiff claimed that the First Defendant had represented himself as having control of GDSB. The Plaintiff accepted the offer of employment because of the promises of future rewards should GDSB business do well. He was paid RM12,000 per month with 2% commission on the total annual turnover of GDSB. The Plaintiff had rejected other job offers with salaries ranging from RM22,000 to RM27,000 per month. The Plaintiff was appointed a director of GDSB in 2015 but resigned in 2019. GDSB's business was doing well and expanding but it had yet to be listed or sold. The Plaintiff's claim against the First Defendant and Second Defendant was for loss and damage suffered as a result of the First Defendant's breach of his oral agreement with the Plaintiff.

Based on the above facts, determine if the action commenced by the Plaintiff could proceed against the First and Second Defendants.

(13 marks)

(b) "Laches has been succinctly described as 'inaction with one's eyes open'."

Per Edgar Joseph J (as he then was) in *Alfred Templeton & Ors v Mount Pleasure Corp Sdn. Bhd.* [1989] 1 CLJ 693.

Elucidate what laches are and the conditions that must be fulfilled for laches to be established.

(12 marks)

(Total: 25 marks)

Continued...

QUESTION 2

(a) On 30.12.2019, the Plaintiff commenced an action against the Defendant by way of the Writ of Summons which was filed together with the Statement of Claim. The Writ and Statement of Claim having not been served on the Defendant, the Plaintiff filed the Amended Writ of Summons and Amended Statement of Claim on 23.07.2020. The Amended Writ and Statement of Claims were re-dated. The Amended Writ and Statement of Claim were served on the Defendant vide Registered Post with a covering letter from the Plaintiff's Solicitors letter dated 26.7.2020.

Determine if the service of the Writ was valid.

(13 marks)

(b) The Defendant, Teo Ah Yan, is the wife of the one Yeo Ah Lan, who died in 2012 (the Deceased). The Defendant and the Deceased had four children. The Plaintiff, Yeo Leng Choo, claims that during the subsistence of the marriage of the first defendant with the Deceased, the latter had married her late mother, one Wong who died in 2017. The alleged marriage took place in the early part of the year 1960 under Chinese customary marriage. By this marriage, the Deceased and Wong had four children, one of whom is the Plaintiff. In 2019, the Defendant filed for the letter of administration (LA) in respect of the estate of the Deceased. The LA was duly issued to them. The Plaintiff claims that she is the lawful daughter of the Deceased by reason of the Deceased's marriage with Wong. She, therefore, claims that she is entitled as a beneficiary to the estate of the Deceased. Hence, she applies to be included as an administrator and as a beneficiary of the deceased estate. The Plaintiff has commenced an action by way of Originating Summons to amend the LA to include herself as an additional administrator and as an additional beneficiary of the estate of the Deceased.

Based on the above facts, examine the validity of the mode of commencement and name the parties in the action accordingly.

(12 marks)

(Total: 25 marks)

Continued...

QUESTION 3

The Plaintiff commenced an action against the Defendant by a Writ of Summons (the Writ) and Statement of Claim dated 21.06.2020. The Plaintiff served the Writ and Statement of Claim by way of substituted service. The order for substituted service (the Order) was obtained on 20.11.2020. The substituted service was by way of publication in a daily newspaper, posting the Order, the Writ and Statement of Claim at the High Court Notice Board and leaving the same copy at the last known address of the Defendant. The Defendant did not enter an appearance and hence, a judgment in default of appearance (JIDA) was entered on 20.01.2021. The Defendant filed a Notice of Application dated 15.05.2021 (the Application) to set aside the JIDA.

Based on the above facts:

(a) Briefly explain the procedure to obtain a JIDA.

(3 marks)

(b) Explain on the service of the Writ and Statement of Claim made by the Plaintiff.

(9 marks)

(c) Evaluate whether the Defendant may set aside the JIDA *ex debito justitiae*.

(13 marks)

(Total: 25 marks)

Continued...

PART B: ANSWER EITHER QUESTION 4A OR QUESTION 4B

QUESTION 4A

(a) At the request of the First Defendant, the Plaintiff granted Swan Sdn. Bhd. (the Borrower) financing facilities. The First, Second and Third Defendants were the guarantors to the financing facilities vide the execution a corporate guarantee executed by the First Defendant and letter of guarantee executed by the Second and Third Defendants respectively. Clause 11 of the terms and conditions of the corporate guarantee and the letter of guarantee respectively provided that a statement signed by a manager, secretary, or any officer of the Plaintiff as to the monies and liabilities due to the Plaintiff shall be binding, final and conclusive evidence against the Defendants. The Borrower defaulted in payment and the Plaintiff commenced a Writ of Summons (the Writ) and Statement of Claim dated 12.12.2020 against the Defendants demanding from the Defendants as guarantors, payment of the outstanding amounts. The Writ and Statement of Claim were served on the Defendants on 10.01.2021. The Defendants filed their appearance on 13.01.2021. By a Notice of Application dated 20.02.2021 (Enclosure 17) the Plaintiff sought for a summary judgment to be entered against the Defendants. Upon perusal of the affidavits and the relevant submissions filed by the parties and upon hearing learned counsels for the Plaintiff and the Defendants, on 26.8.2021 the Court allowed all the prayers in Enclosure 17 except for the prayer for late payment charges as the Plaintiff had failed to prove to the court that it was entitled to late payment charges at the rate of 2% per annum on the amount claimed. Aggrieved by the decision, the Defendants appealed.

Based on the above –

(i) Justify the court's decision on the application for summary judgment.

(8 marks)

(ii) Explain the issues that can be raised on appeal by the Defendants.

(9 marks)

(b) "In a nutshell, the order enables the court to determine any question of law or construction of document where it appears to the court that such question is suitable for determination without the full trial of the action and such determination will finally determine the entire cause or matter or any claim or issue therein. The order is new to our civil procedure and hence, the few local decisions of the High Court on the ambit of O 14A are not instructive".

per Mohd Noor Ahmad in *Petroleum Nasional Bhd v Kerajaan Negeri Terengganu* [2004] 1 MLJ 8.

Elucidate the principle(s) emanating from the above statement.

(8 marks)

(Total: 25 marks)

Continued...

QUESTION 4B

(a) Answer the following separate and independent questions.

(i) Briefly explain the procedural device to a prompt and expeditious disposition of a case.

(5 marks)

(ii) "It is of course trite law that O14 proceedings are not decided by weighing the two affidavits. It is also trite that the mere assertion in an affidavit of a given situation which is to be the basis of a defence does not, *ipso facto*, provide leave to defend; the Court must look at the whole situation and ask itself whether the defendant has satisfied the Court that there is a fair or reasonable probability of the defendant's having a real or *bona fide* defence."

Explain.

(8 marks)

(b) The Second Plaintiff obtained banking facilities, including a Bankers' Acceptance Facility ("BA Facility"), from the Defendant, a bank. The First Plaintiff, the holding company of the Second Plaintiff, provided a corporate guarantee to the Defendant for the BA Facility. The Plaintiffs claimed that the Defendant had breached its duty to the Plaintiffs by allowing drawdowns under the BA Facility. The Plaintiffs alleged that the drawdowns were allowed even though the Defendant had been put on inquiry that the Plaintiffs' funds were being misappropriated. The Defendant filed a counterclaim against the Plaintiffs for outstanding sums due under the BA Facility. The Defendant then filed an application for summary judgment on the counterclaim. The court granted summary judgment on the counterclaim. Pursuant to the summary judgment, the Plaintiffs were ordered to pay approximately RM18.39 million, plus interest, to the Defendant.

Based on the above facts, explain the application for summary judgment on the counterclaim by the Defendant against the Plaintiffs.

(12 marks)

(Total: 25 marks)

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